

SUBJECT: Establishing in statute Border Prosecution Unit to handle border crimes

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — Phillips, Nevárez, Burns, Dale, Metcalf, Moody, M. White, Wray

0 nays

1 absent — Johnson

WITNESSES: For — Jose Aliseda and Jaime Esparza, Border Prosecution Unit; (*Registered, but did not testify*: Carlos Garcia, 79th Judicial District Attorney's Office; Tonya Ahlschwede; Katherine McAnally)

Against — None

On — (*Registered, but did not testify*: Tom Krampitz, Border Prosecution Unit)

DIGEST: CSHB 12 would establish in statute an independent Border Prosecution Unit that would cooperate with and support attorneys in prosecuting border crime. The bill would provide requirements for the composition of personnel and for the duties, responsibilities, and operating functions of the unit. Specifically, CSHB 12 would:

- outline the unit's required responsibilities;
- create a board of directors to govern the unit and an executive board, with elected officers, to govern the board of directors; and
- require the executive board to hire regional counsel for each subregion.

The bill also would amend the definitions of border crime and border region and would remove a restriction in current law that certain funds must be appropriated only to the criminal justice division to award grants

related to border crime prosecution.

Responsibilities of the Border Prosecution Unit. The Border Prosecution Unit, in collaboration with the Department of Public Safety (DPS), would assist in prosecuting border crime by providing prosecuting attorneys, investigative and support staff, and additional resources.

The unit would provide funding for staff and resources based on solicited requests for proposals from each member of the board of directors, which would govern the unit. The unit would be required to review each request and make recommendations to the criminal justice division of the governor's office regarding distribution of grant funds under the Prosecution of Border Crime Grant Program. The unit could solicit requests and make such recommendations for distribution of grant money to a prosecuting attorney who does not serve in the border region if DPS determined the county or counties the prosecutor represented were significantly affected by border crime.

The unit also would:

- facilitate collaboration of the board of directors with regional counsel and law enforcement in the investigation and prosecution of border crime;
- develop a nonexclusive list of offenses that constitute a "border crime" that are not already included in the statutory definition;
- develop best practices and guidelines for investigation and prosecution of border crime; and
- assist in developing and providing training to prosecutors and law enforcement agencies on issues and techniques relating to the investigation and prosecution of border crime.

CSHB 12 also would allow the unit to apply for and accept gifts, grants, and donations from certain tax-exempt organizations or grants under federal and state programs to fund any activity of the unit under this bill.

Governing structure. The board of directors governing the unit would be

composed of attorneys who prosecute felonies in the border region. The board would include district attorneys from 13 different judicial districts, the criminal district attorney for Hidalgo County, a county attorney for Cameron County, the district attorney for Kleberg and Kenedy counties, and a county attorney for Willacy County.

CSHB 12 would require the board of directors to divide the border region into three subregions and to set the subregion boundaries. The board would meet annually to approve bylaws and to elect an executive board.

Executive Board. The board of directors would be governed by an executive board of seven members elected to two-year terms by the board of directors. Six of those members would represent the subregions and would be elected by a majority vote of the members of the board of directors whose jurisdiction is located in that subregion. One member would be elected by a majority vote of all members of the board of directors.

The executive board would be required to conduct the business of the unit and to hire one or more attorneys to serve as regional counsel for each subregion. The executive board also could employ a person to serve as administrator of the unit or any additional employees needed to carry out the duties of the unit.

Membership on the board of directors or on the executive board would not be considered a paid civil office position. Members would not be entitled to compensation, but they would be entitled to reimbursement for necessary expenses incurred in carrying out their duties.

Officers. The board of directors would elect a presiding officer and an assistant presiding officer from the executive board to serve one-year terms. The assistant presiding officer would serve in the presiding officer's absence or if there were a vacancy in that position before a new officer was elected.

Regional counsel. CSHB 12 would require the executive board to hire

one or more attorneys as regional counsel for each subregion. The regional counsel would be required to assist the board of directors, prosecutors, and other regional counsel in screening and prosecution of border crime, presenting cases to a grand jury, and preparing for trial.

Regional counsel would be required to:

- serve as a liaison between the board of directors and other criminal justice entities;
- provide legal and technical assistance to law enforcement agencies investigating border crime;
- coordinate training with the unit for the board of directors and law enforcement; and
- provide legal and technical assistance to border prosecuting attorneys.

In addition, CSHB 12 would include sexual offenses and assaultive offenses in the statutory definition of border crime. The definition of border region would be expanded to include a county served by a prosecuting attorney whose jurisdiction includes a county that is adjacent to an international border or that is adjacent to a border-adjacent county.

The bill also would repeal the requirement that undedicated and unobligated funds from the operators and chauffeurs license account be appropriated only to the criminal justice division for the purpose of awarding grants under the Prosecution of Border Crime Grant Program.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 12 would formalize the practices and procedures that the Border Prosecution Unit has been implementing successfully since 2009, when Gov. Perry created the unit to aid in border security operations. The bill also would provide additional structure and guidance for the unit.

The Border Prosecution Unit is vital in providing resources to prosecutors to screen cases, secure indictments, and bring criminals to trial. Under the

program, the state provides funding for district attorneys to coordinate with law enforcement to handle border crimes, including drug trafficking, human trafficking, and money laundering. The Border Prosecution Unit also targets gangs and other criminal organizations operating in Texas, including those in state prison facilities. The unit has developed the definition of border crime, created performance measures, conducted joint training exercises, and developed protocol together with DPS for handling border cases. Codifying the Border Prosecution Unit would give it more predictability and permanency. Formally establishing the Border Prosecution Unit also would complement the increase in law enforcement that recently was established in the border region.

Formalizing the unit's practices would improve coordination and communication on the border between prosecutors and law enforcement. Some of the regional counsel described in the bill would reside in DPS offices. This would promote more efficient collaboration and use of resources to detect threats and take down large criminal enterprises. CSHB 12 also would improve coordination between jurisdictions in cases that reach across county and jurisdictional boundaries.

CSHB 12 would allow for money and resources to continue to be distributed to some of the poorest counties in the state where they would make the biggest impact. Border counties have experienced an expansion of criminal activity beyond money laundering and drug trafficking, including kidnapping and extortion. Many cartels and other criminals along the border have figured out which counties have fewer resources for investigations and prosecutions and seek to exploit those areas. Many of the small rural border counties affected by CSHB 12 have just three prosecutors, only one of which may be a border prosecutor. This bill would solidify a unit that makes a big difference in combating border crime, particularly in those communities.

Border crime affects the entire state, but CSHB 12 would help prevent criminals from spreading deeper into Texas by stopping crime as close to the border as possible. Statistics showing low crime rates in border cities are not accurate. Major crimes are being committed on the border, as well

as beyond the border region. Although El Paso reports low crime rates, it is dangerous just across the border. The unit is necessary to ensure the safety of the border and the rest of the state.

OPPONENTS
SAY:

CSHB 12 is an unnecessary bill that would allow for the operation of a unit that already has been operating since 2009 without statutory authority. The Border Prosecution Unit does not need statutory authority to continue its work.

Furthermore, the bill would codify a prosecution unit that uses additional state funding to combat crime in an area that is relatively safe. The border region has a low crime rate compared with the rest of the state. El Paso has one of the lowest crime rates in the country compared with other cities of its size, and the Rio Grande Valley is safer than most U.S. cities. Devoting more state resources to increasing criminal investigations and prosecutions in this area is unnecessary.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have an estimated negative net impact to general revenue funds of \$2.97 million through the biennium ending August 31, 2017.

CSHB 12 differs from the introduced bill in that it would:

- use the definitions of border crime and border region that are specified by Government Code, sec. 772.0071 instead of reprinting the definitions in a new subsection;
- include assaultive and sexual offenses in the definition of border crime;
- add certain counties to the definition of border region under sec. 772.0071;
- change the definition of border prosecuting attorney to include any attorney who prosecutes felony border crimes;
- require that a prosecuting attorney have felony criminal jurisdiction;
- specify that the board of directors members for Cameron and Willacy counties be county attorneys with felony criminal

jurisdiction, rather than district attorneys;

- allow, rather than require, the executive board to hire a unit administrator;
- allow prosecuting attorneys to use grant funds to hire support staff and other resources;
- require the unit to solicit and review requests for grant proposals from members of the board of directors and make recommendations to the criminal justice division of the governor's office;
- allow the unit to solicit requests and make recommendations for grant support for prosecuting attorneys outside the border region if it is determined the county is significantly affected by border crime;
- remove a requirement in the original bill that would have required the state to reimburse a county in the border region for certain expenses; and
- repeal Government Code, section 772.0071(d), related to appropriations used to award border crime prosecution grants.

A duplicate bill, HB 3037, was filed by Longoria on March 11.